

APPLICANTS:
Robert & Kimberly Michel

REQUEST: A special exception pursuant
to allow commercial vehicle and equipment
storage and construction services in the
Agricultural District

HEARING DATE: January 31, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5563

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Robert Michel

CO-APPLICANT: Kimberly Michel

LOCATION: 1152 Old Pylesville Road – Wharton Estates, Pylesville
Tax Map: 10 / Grid: 2F / Parcel: 0240 / Lot: 3
Fifth (5th) Election District

ZONING: AG / Agricultural

REQUEST: A special exception, pursuant to Section 267-53D(1) of the Harford
County Code, to allow commercial vehicle and equipment storage, and a
special exception pursuant to Section 267-53H(1) to allow construction
services in the AG District.

TESTIMONY AND EVIDENCE OF RECORD:

Robert Michel, Applicant, explained that he is in the welding and mechanical repair business and, additionally, installs propane tanks. He requests a special exception to allow his commercial vehicles and equipment to be stored at his residence.

The subject property is a 23.1 acre parcel, zoned agricultural, improved by a house, two outbuildings used as stables and a 70 foot by 123 foot by 30 foot steel shed with Mr. Michel built without a permit and for which he seeks permission to use for his construction services business. On the property, with Mr. Michel, reside his wife, grandson, and son.

The Applicant started his business in 1984 and has been operating from the subject property since approximately 1995. He employs as many as 7 employees, although at the present time he has 3 employees only.

Mr. Michel described his propane business. He, his men and equipment, deliver propane tanks primarily to residential customers. The tanks are then installed underground on the customers' property. This requires certain types of construction equipment and materials. Some empty propane tanks are stored on the subject property, as well as the construction equipment.

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The construction equipment includes the following:

- Two 1987 GMC step vans, used for welding.
- Car trailer
- One 1997 Ford F-350 utility pick-up truck, primarily used in the propane business
- One 1985 Mack dump truck, used to haul sand for the propane tank installation, and also to tow the trailer used to transport the propane tanks.
- One S-10 pick-up truck
- Two backhoes.

No welding is done on the property, although some steel is stored for fabrication off-site.

Much of the subject property is presently used by Mr. Michel to raise livestock. He hopes to expand his agricultural operation in the future by raising buffalo. Mr. Michel testified that vegetative buffers exist along Old Pylesville Road, along the northern property line, and also on the property to the west.

For the most part, explained Mr. Michael, his work is done off-site. Mr. Michel intends to store all of his vehicles within the steel shed on the property. All repair work to his vehicles will be conducted within the shed.

Mr. Michel's hours of operation generally coincide with daylight hours. As the day lengthens in the summer, his workday increases.

If Mr. Michel receives approval of the requested special exceptions he will install a concrete floor within the barn. All proposed conditions of the Staff Report are acceptable.

Mr. Michel has agreed to the conditions which have been proposed by People's Counsel, representing certain of the neighboring property owners. Those agreed upon conditions, to be incorporated within any recommended approval, are as follows:

1. Year-round, effective screening/landscape material to screen the large building from the road and neighbors. For example, fast growing evergreen plantings, of adequate size to provide screening that is as effective as possible. Screening should be accomplished within an established time frame.
2. Screening as described above to be placed along the driveway and between the roadway and the "parking area" to shield any vehicles (employee and business vehicles) from view.
3. All business activities (including repairs, dumping of material, storage of equipment and materials) are to take place inside the large building with the doors closed.
4. No commercial deliveries of equipment, tanks, sand or other material outside of normal business hours.

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5. No more than 3 employees working/parking on the site.
6. No dangerous chemicals to be used or stored on site; no propane (other than for personal residential use) to be stored on site.
7. No outdoor storage of vehicles and/or equipment.
8. No commercial activities, including vehicle deliveries, etc. after 5 p.m. when dark, or after 8 p.m. in summer. No commercial activities prior to 6:00 a.m. or on Sundays.
9. Obtain all necessary permits and inspections.
10. All untagged/inoperable vehicles shall be tagged, stored within the building or removed from the property.
11. All “junk” either stored in the building or removed from the property.
12. Storage containers and old shed shall be removed from the site.
13. Vehicles shall be limited to 2 panel vans, 2 dump trucks, 2 trailers, 2 backhoes, F-350 pick-up truck, S-10 pick-up truck, car trailer, Ingersoll Rand Air Compressor SA 200 Welder. The Applicant may replace individual items of equipment with a similar piece of equipment, but shall not increase the number or type of vehicles or piece of major equipment on-site.
14. Approval would be for the use of the Applicants alone and would terminate upon the sale of the property, the Applicants moving their residence off of the property, or the termination of the business.
15. Any increase in the number or types of vehicles, the number of employees and/or the level or nature of commercial activities shall be considered to be an expansion of commercial activities beyond that which would be considered compatible with an agricultural/residential neighborhood.

As noted above, all vehicles and equipment will be stored within the barn. Mr. Michel explained the sand which he uses in the installation of his propane tanks will also be kept inside the barn. Mr. Michel receives up to six tractor-trailer loads of sand per year which, again, he stores at this property and is removed by his dump truck to individual job sites. Back-up alarms on the Applicants equipment have all been disabled.

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Structural steel will also be stored in the building. Normally, Mr. Michel does not fabricate steel on his property. Rather, it is removed to the job site and welded at the job site. At the most, Mr. Michel will have up to 10 tons of steel stored in the building at any one time. In most instances the steel is delivered to the job site or picked-up by his equipment and taken directly to the job site. There may, however, be a rare occasion on which steel is delivered to and fabricated inside the building on the subject property.

The Applicant plans additional landscaping around his property in March 2007.

Mr. Michel notes that a few commercial businesses are located close to his property and in his neighborhood. The North Harford Gun and Fish Association is located very close to his property. The North Harford Gun and Fish Association conducts regular gun shoots. A number of ATV's run around the neighborhood and on neighbors properties.

Mr. Michel, accordingly, believes that the proposed special exceptions would have no adverse impact on adjoining properties or on the neighborhood.

Next in support of the Applicant testified Robert Funk who resides at 1140 Old Pylesville Road. Mr. Funk has resided at his property since 1995, and is a neighbor of Mr. Michel's. Mr. Funk can see the Michel's property from his location. He is familiar with the use that Mr. Michel has made of his property since Mr. Michel's occupancy. Mr. Funk has no objection to the requested use. He is not bothered by it, nor is he opposed to it.

Next testified Stephen Thomas, who resides at 829 Wheeler School Road. Mr. Thomas' property backs up to that of Mr. and Mrs. Michel. Mr. Thomas can see the Michel's property. Mr. Michel's business does not bother Mr. Thomas, and he has no objection to the granting of the special exceptions.

Next testified Annette Brown who resides at 1155 Old Pylesville Road, also adjacent to the Michel property. Mr. Brown has lived at her property for about one year. She is familiar with the request and has no objection to it.

Next testified Stephen Ferguson who has resided at 1145 Old Pylesville Road since September 2004. Mr. Ferguson, who lives two houses away from the Michel's property, is familiar with Mr. Michel's operation and does not object to the granting of the special exceptions. Mr. Ferguson hears more noise from traffic on the public roadways than he does from the Michel property.

Next testified Nicole Crone, who resides at 1161 Old Pylesville Road, close to the subject property. Ms. Crone understands the proposal of Mr. Michel, and has no objection to it. Mr. Michel is a good neighbor. Mr. Crone can see Mr. Michel's shed, and his use, and does not object to it.

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Next testified Edward Steere, offered and accepted as a professional land planner. Mr. Steere, a Project Manager for Frederick Ward Associates, Inc., is familiar with site plan development and design. Mr. Steere is also familiar with the Harford County Development Regulations and has visited the subject property.

Mr. Steere has reviewed the Staff Report and applicable Development Regulations. He agrees with the Staff's findings and conclusions concerning this request. Mr. Steere believes that the proposal will have no adverse effect beyond those inherently exhibited by other similar uses within the zone. The proposal as described by Mr. Michel is a low impact, low intensity use. Other uses exist in the area which, in fact, are of higher impact and higher intensity than the operation proposed.

Mr. Steere indicated that the sight distances from the Applicants' property on Old Pylesville Road are good. Mr. Steere believes that the barn which will house the Applicants' construction equipment is similar in scale to other barns in the area. Mr. Steere described the general area as very rural, with large farm parcels. Uses similar to that of Applicant have been approved for smaller lots within Harford County.

Mr. Steere described the barn as being located approximately 219 feet from Old Pylesville Road. Mr. Steere suggests that the Applicant install 5 foot tall pine trees along Old Pylesville Road in order to soften the visual impact of the barn from passers-by. Otherwise, the view onto the subject property from Old Pylesville Road, and from the Smith property across Old Pylesville Road, is somewhat open, primarily due to the existing driveway onto the subject property from Old Pylesville Road. The driveway itself cannot be screened as it is virtually a straight passageway from Old Pylesville Road to the barn. It would also be helpful, according to Mr. Steere, to plant trees along the northwest side of the building so as to attempt to buffer the view of the barn from motorists on Old Pylesville Road.

In support of the argument that the barn is, for the most part, well buffered from adjoining properties and roadways, Mr. Steere exhibited a series of line-of-sight drawings showing the view of the barn from various locations. (See Applicant's Exhibit No. 16.) Mr. Steere believes that, primarily, screening is needed along Old Pylesville Road so as to screen the lower part of the existing forest. The lower part, near the ground level, needs additional plantings in order to more fully visually buffer the use.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune, in reiterating the Department's position, stated that the Applicant can meet all applicable standards provided there is no outside storage. The Applicant is well able to meet the 10 foot buffer requirement or the Code. The use complies with all applicable standards of Section 267-9I, and the use is consistent with other agricultural uses in the area. Good sight distances exist along Old Pylesville Road and, with appropriate conditions, the use can be consistent with good planning principles. The Department recommends the building be finished within 6 months and that all vehicles and equipment be stored inside within that time frame.

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Mr. McClune believes that the building will, in any event, be visible from Old Pylesville Road. The use cannot be totally screened but the planting of some vegetative screening around it will help mitigate the view. Mr. McClune further suggests that the barn constructed by the Applicant and in which he will be storing his equipment, described by the Applicant as a “pole barn”, is not dissimilar to other agricultural buildings.

In opposition testified Kenneth Smith who resides at 1149 Old Pylesville Road, directly across Old Pylesville Road from the driveway of the subject property. Mr. Smith and his family and children have lived at this location for approximately 25 years. Mr. Smith’s property is approximately 3 acres in size.

Mr. Smith lives across from the driveway into the subject property which was shown by the Applicant as line of sight “B”. The barn on the Applicants’ property is directly in front of Mr. Smith’s house. Mr. Smith can see the driveway and a portion of the barn through the woods and down the driveway. If Mr. Smith proceeds approximately half way down his – Mr. Smith’s – driveway, Mr. Smith can see almost all of the barn.

Mr. Smith introduced various photographs, marked Exhibits No. 1 and 2, which support his testimony that the barn is visible from Mr. Smith’s property.

Mr. Smith is not necessarily against the granting of the special exceptions, particularly if the conditions as suggested by People’s Counsel, and as agreed to by the Applicants, are applied and are conformed to. However, Mr. Smith does not wish to see the commercial enterprise of the Applicants expanded. Mr. Smith believes that under no condition should it be expanded. He is concerned that anything greater than that proposed by the Applicants will not be compatible with the neighborhood.

There was no other testimony or evidence presented in opposition.

APPLICABLE LAW:

These special exception requests are governed by Sections 267-53D(1) and 267-53H(1) of the Harford County Code:

“D. Motor Vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

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- (a) *The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*
- (b) *The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*
- (c) *A minimum parcel area of two (2) acres shall be provided.”*

Section 267-53H(1) of the Harford County Code states:

“H. *Services.*

- (1) *Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants wish to continue to use their agriculturally zoned 23 acre parcel for, in addition to typical residential uses, a storage location for the commercial vehicles and equipment and materials used in their construction businesses. The Applicants commercial uses are, to describe it fairly, relatively intense and will be operating five days per week. While the Applicants have a large parcel and many of their neighbors have expressed no opposition, it is nevertheless of an intensity and scope that must be examined carefully for impact on adjoining neighbors and for any real and potential impacts of the standards of the Development Regulations.

The Applicants, obviously wishing to be good neighbors and concerned about the potential impact of the businesses, have agreed with People’s Counsel and the individuals represented by People’s Counsel to a relatively extensive set of conditions which, if adhered to, will minimize the real and potential impact of the uses. Accordingly, this decision is rendered in light of those agreed upon conditions.

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Initially, the Applicants must show that they meet the specific special exception requirements found in the applicable sections of the Development Regulations. Section 267-53D(1) allows the special exception for motor vehicle related services.

The specific requirements of that section are addressed as follows:

D. Motor Vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

The Applicants' zoning district is agricultural.

- (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

The Applicants propose to store all equipment and vehicles within the large pole barn on the property.

- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

No sales or service use will be conducted by the Applicants.

- (c) A minimum parcel area of two (2) acres shall be provided.*

The Applicants have, as stated above, a parcel of 23 acres and accordingly meet and exceed this requirement.

The Applicants further ask for a special exception under Section 267-53H(1) of the Harford County Development Regulations, which allows construction service and suppliers as follows:

H. Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.*

Again, the Applicants clearly meet this requirement. The property is zoned agricultural, and a buffer of at least 10 feet wide will be provided.

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Accordingly, as can be seen, the Applicants meet the specific requirements of the requested special exceptions.

Nevertheless, the Applicants' requests remain subject to review under the Limitations, Guides and Standards section of Section 267-9I of the Harford County Development Regulations. That section is addressed as follows, again in light of the Applicants' agreement to conform to all of the conditions placed on the record and stipulated to by the parties.

- (1) *The number of persons living or working in the immediate area.*

As noted in the Staff Report, the primary land use in the area is agricultural. In fact, the area is mixed residential and agricultural, with large farms and large residential lots. The proposed use should not affect the number of people living in the neighborhood or area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The sight distance on Old Pylesville Road at the Applicants' driveway is good, and should not cause passing motorists a hazard. Maryland Route 165 in the area of the subject property is a minor collector road. The Applicants propose no facilities for pedestrians and, in fact, facilities for pedestrians would not be appropriate in the area given its rural nature. Accordingly, there should be no adverse impact on traffic conditions.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The requested special exceptions have been legislatively determined to be compatible with existing uses. No testimony was given that the proposed use would not be compatible with other and existing uses. In the general area are located farms and some commercial activities which utilize equipment similar to that utilized by the Applicants, and which generate impacts similar to that of the Applicants. Furthermore, there should be no adverse fiscal impact as a result of the proposal.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such adverse impacts were identified by either the Applicants, the surrounding neighbors, or the Department of Planning and Zoning.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

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The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Whiteford/Cardiff Volunteer Fire Departments will provide fire protection and emergency service. The property is served by private well and septic systems. A company of the Applicants choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

As testified to by the Department of Planning and Zoning Staff and by the Applicants' witnesses, the use can be consistent with the generally accepted planning principles, with the application of appropriate conditions. As stated, the Applicants have agreed to be bound by a relatively extensive set of conditions. With the application of those conditions, the use will be consistent with generally accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such impact, either real or potential, was identified and, in fact, no such structures were identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

Evidence of record is that the Applicants' property is encumbered by a flood plain and by a Natural Resource District. No evidence was presented that these features would be impacted by the proposed use.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks were identified.

It is accordingly found that the Applicants comply with the more generalized requirements of the Limitations, Guides and Standards section of the Harford County Development Regulations.

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Further, and lastly, the application must also be reviewed in light of the general considerations to be applied in any special exception application. Schultz v. Pritts, 291 Md. 1 (1981), has set forth the guiding principles that special exceptions may be approved provided their adverse impacts, if any, are no greater than those which would normally be generated by such a use within the particular zone. In other words, commercial vehicle and equipment storage, and construction services all generate certain impacts, some of which are negative. However, a special exception for these uses may not be denied provided the impacts of the particular use under review are not greater than the impacts one would normally expect from that particular use or uses. It is accordingly found, based on all of the evidence presented, that the impacts from the proposed special exception uses will be no greater than what one would normally expect from such a use, regardless of its location within the zone. Indeed, no evidence was suggested to the contrary.

CONCLUSION:

It is accordingly recommended that the requested special exceptions be granted, subject to the following conditions:

1. Year-round, effective screening/landscape material to screen the large building from the road and neighbors. For example, fast growing evergreen plantings, of adequate size to provide screening that is as effective as possible. Screening should be accomplished within an established time frame. A landscaping plan shall be submitted to the Harford County Department of Planning and Zoning for review and approval with the site plan.
2. Screening as described above to be placed along the driveway and between the roadway and the “parking area” to shield any vehicles (employee and business vehicles) from view.
3. All business activities (including repairs, dumping of material, storage of equipment and materials) are to take place inside the large building with the doors closed.
4. No commercial deliveries of equipment, tanks, sand or other material outside of normal business hours.
5. No more than 3 employees working/parking on the site.
6. No dangerous chemicals to be used or stored on site; no propane (other than for personal residential use) to be stored on site.
7. No outdoor storage of vehicles and/or equipment.
8. No commercial activities, including vehicle deliveries, etc. after 5 p.m. when dark, or after 8 p.m. in summer. No commercial activities prior to 6:00 a.m. or on Sundays.

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9. That the Applicants shall obtain all necessary permits and inspections.
10. All untagged/inoperable vehicles shall be tagged, stored within the building or removed from the property.
11. All “junk” either stored in the building or removed from the property.
12. Storage containers and old shed shall be removed from the site.
13. Vehicles shall be limited to 2 panel vans, 2 dump trucks, 2 trailers, 2 backhoes, F-350 pick-up truck, S-10 pick-up truck, car trailer, Ingersoll Rand Air Compressor SA 200 Welder. The Applicant may replace individual items of equipment with a similar piece of equipment, but shall not increase the number or type of vehicles or piece of major equipment on-site.
14. Approval is for the use of the Applicants alone and will terminate upon the sale of the property, the Applicants moving their residence off of the property, or the termination or transfer of the business.
15. Any increase in the number or types of vehicles, the number of employees and/or the level or nature of commercial activities shall be considered to be an expansion of commercial activities beyond that which would be considered compatible with an agricultural/residential neighborhood.
16. The Applicants shall submit a detailed site plan to the County for review and approval thru the Development Advisory Committee.

Date: March 19, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on APRIL 16, 2007.